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ATTORNEY FOR APPELLANT:

**MARK S. LENYO**  
South Bend, Indiana

ATTORNEY FOR APPELLEE:

**TERESA W. MORGUSON**  
South Bend, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE TERMINATION OF )  
THE PARENT-CHILD RELATIONSHIP OF )  
O.A.G, )  
 )  
JUAN PABLO GONZALEZ, SR., )  
 )  
Appellant, )  
 )  
vs. )  
 )  
ST. JOSEPH COUNTY DEPARTMENT )  
OF CHILD SERVICES, )  
 )  
Appellee. )

No. 71A03-0712-JV-566

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APPEAL FROM THE ST. JOSEPH PROBATE COURT  
The Honorable Peter J. Nemeth, Judge  
Cause No. 71J01-0610-JT-102

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**March 19, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Juan Pablo Gonzalez, Sr. appeals the termination of his parental rights. We affirm.

### **Issue**

Gonzalez raises one issue, which we restate as whether there is sufficient evidence to support the termination of his parental rights to O.G.

### **Facts**

O.G. was born on November 5, 2005. Due to her positive test for marijuana at birth, O.G. was detained and placed in foster care. A petition alleging O.G. to be a child in need of services (“CHINS”) was filed in December 2005. The petition alleged that O.G. was born testing positive for marijuana and was not receiving the care and treatment that she needed. On January 4, 2006, O.G. was determined to be a CHINS, and Gonzalez was ordered to submit to paternity testing. In February 2006, the CHINS dispositional decree ordered that O.G. was to remain in foster care. In addition, Gonzalez was ordered to participate in regular visitation with O.G., maintain consistent contact with the St. Joseph County Department of Child Services (“DCS”), establish his paternity of O.G., participate in services once paternity was established, and meet with the court’s fiscal officer to determine the amount of support to be paid for O.G.

On November 1, 2006, the CHINS court held a permanency hearing and approved the permanency plan for O.G., which called for initiation of proceedings to terminate the parent-child relationship of both parents. In fact, on October 30, 2006, DCS already had filed a petition for involuntary termination of parental rights. On July 11, 2007, a

termination of parental rights hearing was conducted, and Gonzalez's parental rights were terminated.<sup>1</sup>

### **Analysis**

The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. Bester v. Lake County Office of Family and Children, 839 N.E.2d 143, 147 (Ind. 2005). However, these parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. Id. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. In re the Involuntary Termination of Parent-Child Relationship of Kay L., 867 N.E.2d 236, 239 (Ind. Ct. App. 2007). The purpose of terminating parental rights is not to punish parents but to protect children. In re the Involuntary Termination of Parent-Child Relationship of B.R., 875 N.E.2d 369, 372 (Ind. Ct. App. 2007), trans. denied.

In reviewing the termination of parental rights, we neither reweigh the evidence nor judge witness credibility. Bester, 839 N.E.2d at 147. We consider only the evidence and reasonable inferences that are most favorable to the judgment. Id.

A petition to terminate the parent-child relationship must allege:

(A) one (1) of the following exists:

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<sup>1</sup> On June 29, 2007, O.G.'s biological mother consented to the termination of her parental rights; thus, she is not a party to this appeal.

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
  - (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
  - (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
- (B) there is a reasonable probability that:
- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
  - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2).

DCS bore the burden of proving the allegations by clear and convincing evidence. Bester, 839 N.E.2d at 148. Clear and convincing evidence need not show that the continued custody of the parents is wholly inadequate for the child's very survival. Id. Instead, it is sufficient to demonstrate by clear and convincing evidence that the child's emotional and physical development are threatened by the parent's custody. Id.

Gonzalez argues there is insufficient evidence to sustain the termination of his parental rights to O.G. because the child was removed based upon the drug use of O.G.'s

biological mother.<sup>2</sup> In terminating Gonzalez's parental rights, the trial court found that there is a reasonable probability that the conditions resulting in the removal of O.G. from her parents' home will not be remedied and that there is a reasonable probability that a continuation of the parent-child relationship will pose a threat to the well-being of O.G. The trial court also found that it is in the best interest of O.G. that the parent-child relationship be terminated.

We first address the court's finding that there is a reasonable probability that the conditions resulting in the removal of O.G. from her parents' home will not be remedied. In making this determination, the trial court should judge a parent's fitness at the time of the termination hearing, considering any change in conditions since the removal. Lang v. Starke County Office of Family and Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied. However, the trial court should also consider the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. Prince v. Dep't of Child Services, 861 N.E.2d 1223, 1229 (Ind. Ct. App. 2007). Additionally, the failure to exercise the right to visit one's children demonstrates a lack of commitment to complete the actions necessary to preserve the parent-child relationship. Lang, 861 N.E.2d at 372.

In support of the termination of Gonzalez's parental rights, the DCS presented evidence demonstrating his criminal history, substance abuse, unstable housing, unstable

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<sup>2</sup> Gonzalez does not challenge the court's findings that O.G. has been removed from her parents and has been under the supervision of DCS for at least fifteen of the most recent twenty-two months or that DCS has a satisfactory plan for the care and treatment of O.G., specifically adoption. See I.C. § 31-35-2-4(b)(2)(A)(iii) & (D). Thus, we need not address those statutory requirements in this opinion.

employment history, failure to pay support, and lack of visitation. The evidence showed that Gonzalez has two battery convictions from May 2005 and June 2006. The victim of the June 2006 conviction was O.G.'s biological mother. In addition, at the time of the termination hearing, Gonzalez had pending charges of felony battery, the victims of which are O.G.'s biological mother and Gonzalez's other children. While out on bond for those charges, Gonzalez was arrested and charged with attempted murder. The attempted murder charge stems from an incident where Gonzalez allegedly beat a man into unconsciousness with a piece of wood and then fled to Arizona where he was later apprehended.

With regard to his substance abuse issues, Gonzalez attended an eight-week outpatient program for alcohol dependence, cannabis dependence, and sedative dependence. Although Gonzalez's substance abuse counselor reported that he received his diploma for attendance at the program, he also stated that Gonzalez's honesty about his drug and alcohol use was questionable, that he was often disruptive, uncooperative and argumentative, and that he did not seem to internalize or fully understand the concept of the program. The counselor indicated that he observed very little measurable progress toward Gonzalez's treatment objectives. In addition, Gonzalez did not attend the recommended aftercare program.

During his time in the treatment program, Gonzalez reported to his counselor his lack of stable housing and reported at least three different addresses in the eight-week period. At the termination hearing, Mary Grenier, DCS case manager, testified that the CHINS dispositional decree required Gonzalez to maintain consistent contact with DCS

but that this was not done due to Gonzalez's lack of a telephone and lack of permanent residence. Although Gonzalez participated in three case planning conferences with DCS regarding O.G., he had no contact with DCS during the six-month period of June 2006 to December 2006, and DCS records show that Gonzales had moved eight times since November 2005. Gonzalez cited unemployment and financial problems as his reason for moving.

When asked at the termination hearing where he works, Gonzalez stated, "[a]nywhere." Tr. at 11. He indicated that he earned approximately \$6,000 to \$7,000 in the preceding year with which to support himself, O.G., and his other two children. In its dispositional decree, the court had ordered Gonzalez to establish paternity of O.G. and pay support on her behalf. Gonzalez testified that he has paid no support on O.G.'s behalf. He submitted to paternity testing but did not have paternity established in court. Grenier testified that program referrals from DCS on behalf of Gonzalez were contingent upon him establishing his paternity of O.G. pursuant to the court's order.

Finally, DCS presented evidence of Gonzalez's visitation with O.G. In the dispositional decree, Gonzalez was ordered to maintain regular visitation with O.G. Visitation was scheduled for every week, and Gonzalez maintained regular visitation for two months. At that point, Gonzalez began to fail to appear for visitations, and the visitations were reduced to every other week. Gonzalez's behavior continued, and by April 15, 2006, visitations were suspended.

DCS also admitted into evidence the report of the Court Appointed Special Advocate ("CASA") in this case, which stated that following the removal of O.G. in

November 2005, Gonzalez's other two children were removed by DCS in December 2006. The report additionally indicated that at the CHINS hearing of these children in April 2007, Gonzalez's older daughter made an allegation of sexual abuse against him. The CASA recommended termination of Gonzalez's parental rights in this case.

This evidence is sufficient to show that the conditions that resulted in O.G.'s removal will not be remedied. To the extent that Gonzalez argues otherwise, he is asking us to reweigh the evidence. We may not do so.<sup>3</sup>

In order to terminate the parent-child relationship, the trial court must also find that the termination of the parent-child relationship is in the best interests of the child. See I.C. § 31-35-2-4(b)(2)(C). In determining what is in the best interests of the child, the court is required to look to the totality of the evidence. In re A.I., 825 N.E.2d 798, 811 (Ind. Ct. App. 2005), trans. denied. In this way, the trial court must subordinate the interests of the parents to those of the children. Id. A parent's historical inability to provide adequate housing, stability, and supervision, together with a current inability to provide the same, will support a finding that continuation of the parent-child relationship is contrary to the child's best interests. In re B.D.J., 728 N.E.2d 195, 203 (Ind. Ct. App. 2000).

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<sup>3</sup> Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, we will affirm if clear and convincing evidence supports either condition. See Castro v. State Office of Family and Children, 842 N.E.2d 367, 373 (Ind. Ct. App. 2006), trans. denied. Therefore, we do not discuss whether evidence supports the trial court's conclusion that the continuation of the relationship between Gonzalez and O.G. poses a threat to O.G. because we find that clear and convincing evidence exists to support the trial court's conclusion that the conditions that resulted in O.G.'s removal will not be remedied.



Here, the evidence demonstrates that termination was in O.G.'s best interests. The evidence revealed that Gonzalez has a substantial criminal history with at least one incident allegedly involving O.G.'s biological mother and Gonzalez's other children and with a pending attempted murder charge. He has failed to provide support for O.G. or maintain regular contact with her, as well as failing to maintain a residence or stable employment. The CASA stated in her report that O.G. has no bond with Gonzalez and has not had visitation with him since April 2006, and she recommended termination to the trial court. Grenier indicated to the court her belief that the termination of Gonzalez's parental rights is in O.G.'s best interests. There is sufficient evidence to support the trial court's finding that the termination of Gonzalez's parental rights was in O.G.'s best interests.

### **Conclusion**

The evidence presented at trial is sufficient to support termination of Gonzalez's parental rights. We affirm.

Affirmed.

SHARPNACK, J., and VAIDIK, J., concur.